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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application Serial No.: 09/993,733)	Group Art Unit: 1772
)	
Filing Date: November 21, 2001)	Examiner: Aughenbaugh,
)	Walter
For: Concrete Formworks And Method Of)	
Making Same)	Docket No.: 013190.0101PTUS
)	(Formerly 13190.101)
Inventor: Gregory D. Johnson)	
)	Confirmation No.: 9460
)	
)	Attachment to Paper No.: 17

SECOND DECLARATION OF CARL A. FOREST

1. I, Carl A. Forest, am currently a Partner in Patton Boggs, LLP and am the attorney prosecuting the above-identified application. All statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true.

2. I have read and am familiar with the claims currently in the application and the Office Action dated August 4, 2004 issued by the Examiner in the application (hereinafter "the Office Action").

3. I submit this Declaration to present to the Examiner facts concerning the patentability of the claims in the application, including bringing to the attention of the Examiner, in an authenticated manner, information relating to the patentability of the claims.

4. On page 14 of the Office Action, the Examiner states that steel is a much stiffer metal than aluminum, so it would not be unexpected that a steel/HDPE/metal laminate panel deflects less than and aluminum/epoxy-type plastic laminate panel. This is true if the panels are otherwise equivalent in the amount of metal used.

5. However, steel also is much more dense than aluminum. In fact, steel is about 2.9 times as dense as aluminum, and has a Young's modulus (the measure of stiffness) of about 2.7 to 3 times that of aluminum. See the Tables 10.1 and 12.1 from University Physics, Sears and Zemansky, Addison-Wesley Publishing, 1957, a copy of

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which is attached. So, weight for weight, aluminum is about as stiff as steel, and perhaps a little stiffer.

6. Laminated panels are usually made so they are close to a standard weight for whatever industry for which the panel is used. Generally, to reach the standard weight, an aluminum panel would include more metal than a steel panel. This is the case in Sobolev, cited by the Examiner.

7. Shortly after receiving the Office Action, I contacted Mr. Edward Rahe, who had submitted the previous two declarations, to find out how the weight of the "German" panel compared to the weight of the "McCormick" panel.

8. Mr. Rahe informed me that Symons had thrown away the "German" panel, and it was no longer being made in a ½-inch thickness by the German company, which he informed me was Alkus. He searched his records and found some literature on the Alkus panels, but they did not give the weight or density. Thus, he did not know the weight of the German panel.

10. I have searched the Alkus Internet site at <http://www.alkus.de> and found that Mr. Rahe is correct. Though they make panels thicker than the "German" panel, they no longer appear to make a ½-inch (12 mm) panel. Further, densities and weights of panels were not given.

11. Further, I have emailed Alkus and asked them for the weights of the panels they do make, but received no answer.

12. Not having been able to determine a weight or density through Alkus, I tried to contact Mr. Rahe again to see if he might be able to provide any further information that might be relevant.

13. However, Mr. Rahe had had a reoccurrence of a stomach cancer and is currently in the hospital, so I have not pressed him further.

14. The Sobolev reference does contain some relevant information that pertains to this issue.

15. In Table II spanning columns 19 and 20, Sobolev compares steel and aluminum panels of about the same weight. The steel panel tested is about 5% heavier than the aluminum panel, but deflects about 20% more. See column 13, lines 42 – 56, for

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an explanation of these tests.

16. The steel panel was also about 30% worse than the aluminum panel for impact resistance.

17. Mr. Rahe states in paragraph 14 of his Supplemental Declaration that a 10% difference in deflection is a significant difference in the concrete formworks industry. Thus, it is fair to say that Sobolev shows that the steel panel is significantly inferior to the aluminum panel.

18. The "German" 1/2-inch panel and the McCormick 3/8-inch panel have essentially the same ratio of thicknesses as the aluminum and steel panels tested and reported on in Table II of Sobolev, probably because there are weight constraints that are necessary to fit into. Thus, it should be expected that they would test about the same, and the steel panel would be about 20% to 30% worse than the aluminum.

19. However, the 3/8-inch McCormick panel tested by Mr. Rahe was 10% better than the "German" panel. See Supplemental Declaration of Edward Rahe, paragraph 13.

20. Thus, the McCormick panel is at least 30% better than one would expect based on Sobolev. Mr. Rahe has suggested under oath that such a result would be "amazing" to one skilled in the art of concrete formwork panels. See Supplemental Declaration of Edward Rahe, paragraph 16.

21. In the Office Action, the Examiner insists that the only valid comparison is a comparison of the panels according to the invention with the panels of Sobolev.

22. I have searched the Internet and reference books in the Boulder Public Library and the University of Colorado to try to find any panel made by Chemical and Polymer Technology, Inc., any firm in Orinda, California, or any panel associated with the name Igor Sobolev, with the intention of buying such a panel and testing it. My search came up dry, except for the Sobolev patent cited by the Examiner and an earlier unrelated Sobolev patent. Apparently, no such panels are made.

23. Further, based on the declarations of Edward Rahe, it is doubtful that any such panels were ever used in the concrete industry. See Supplemental Declaration of Edward Rahe, paragraph 10.

24. I hereby declare that all statements made herein of my own knowledge are

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true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

11/04/04

By:



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